

§ 1704.22

CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or under any other applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) Unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the Federal Government shall be promptly refunded to the employee; and

(15) Proceedings with respect to the debt are governed by 5 U.S.C. 5514.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.22 Review of OFHEO records related to the debt.

(a) *Request for review.* An employee who desires to inspect or copy OFHEO records related to a debt owed by the employee to OFHEO must send a letter to the individual designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of that individual within 15 calendar days after the employee's receipt of the Notice of Intent.

(b) *Review location and time.* In response to a timely request submitted by the employee, the employee shall be notified of the location and time when the employee may inspect and copy records related to his or her debt that are not exempt from disclosure. If the employee is unable personally to inspect such records as the result of geographical or other constraints, OFHEO shall arrange to send copies of such records to the employee.

§ 1704.23 Opportunity for a hearing where OFHEO is the creditor agency.

(a) *Request for a hearing.* (1) *Time-period for submission.* An employee who requests a hearing on the existence or amount of the debt held by OFHEO or

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on the salary-offset schedule proposed by OFHEO, must send such request to OFHEO. The request for a hearing must be received by OFHEO on or before the 15th calendar day following receipt by the employee of the Notice of Intent.

(2) *Failure to submit timely.* If the employee files a request for a hearing after the expiration of the 15th calendar day, OFHEO may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Contents of request.* The request for a hearing must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position. The employee must also specify whether he or she requests an oral hearing. If an oral hearing is requested, the employee should explain why a hearing by examination of the documents without an oral hearing would not resolve the matter.

(4) *Failure to request a hearing.* The failure of an employee to request a hearing will be considered an admission by the employee that the debt exists in the amount specified in the Notice of Intent that was provided to the employee under § 1704.21(b).

(b) *Obtaining the services of a hearing official.* (1) *Debtor is not OFHEO employee.* When the debtor is not an OFHEO employee and OFHEO cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, OFHEO may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(2) *Debtor is OFHEO employee.* When the debtor is an OFHEO employee, OFHEO may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(c) *Procedure.* (1) *Notice of hearing.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to

be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by an examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(2) *Oral hearing.* (i) An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by an examination of the documents alone, as for example, when an issue of credibility or veracity is involved. The oral hearing need not be an adversarial adjudication and rules of evidence need not apply. Witnesses who testify in an oral hearing shall do so under oath or affirmation.

(ii) Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(3) *Hearing by examination of documents.* If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon an examination of the documents.

(d) *Record.* The hearing official shall maintain a summary record of any hearing conducted under this section.

(e) *Decision.* (1) The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed during the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request was received by OFHEO, unless the hearing was delayed at the request of the employee, in which case the 60-day decision period shall be ex-

tended by the number of days by which the hearing was postponed.

(2) The decision of the hearing official shall be final and is considered to be an official certification regarding the existence and the amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. If the hearing official determines that a debt may not be collected by salary offset, but OFHEO finds that the debt is still valid, OFHEO may seek collection of the debt through other means in accordance with applicable law and regulations.

(f) *Content of decision.* The written decision shall include:

(1) A summary of the facts concerning the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(g) *Failure to appear.* If, in the absence of good cause shown, such as illness, the employee or the representative of OFHEO fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or decision based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of the new hearing.

[64 FR 34969, June 30, 1999. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1704.24 Certification where OFHEO is the creditor agency.

(a) *Issuance.* OFHEO shall issue a certification in all cases where the hearing official determines that a debt exists or the employee admits the existence and amount of the debt, as for example, by failing to request a hearing.

(b) *Contents.* The certification must be in writing and state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date of the Federal Government's right to collect the debt first accrued;

(4) The date the employee was notified of the debt, the action(s) taken